IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	
Plaintiff,	)	
vs.	)	C.A. No. 00-2041
	)	Judge William L. Standish
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual,	)	
Defendants	)	

BRIEF IN OPPOSITION TO MOTION FOR RECONSIDERATION OR FOR RELIEF FROM JUDGMENT PURSUANT TO FED.R.CIV.P. 60(b)(6)

AND NOW, comes WRS, Inc., d/b/a WRS Motion Picture Laboratories, a corporation, by its counsel, Thomas E. Reilly, Esquire, with the following Brief in Opposition to Motion of Defendant, Charles von Berntuh, for Reconsideration or for Relief from Judgment Pursuant to Fed.R.Civ.P. 60(b)(6), as follows:

I. INTRODUCTION

WRS commenced this action seeking to recover from Plaza Entertainment, Inc. (hereinafter referred to as “Plaza”) and its guarantors, Charles von Bernuth, (hereinafter referred to as “von Bernuth”) Eric Parkinson (hereinafter referred to as “Parkinson” and John C. Herklotz (hereinafter referred to as “Herklotz”) of money owed for services rendered and goods supplied on behalf of Plaza Entertainment, Inc. In addition to requesting money judgments, WRS sought a declaration that it could enforce a security interest against Plaza’s inventory of copies of films, without infringing on the copyrights of the “rights holders” who had enlisted Plaza to distribute the films, an order foreclosing the security interest to allow Plaza to exploit those rights, an injunction against Plaza transferring those assets, and an accounting of the sales made by Plaza. Following the commencement of the case, WRS, filed bankruptcy. During the Bankruptcy, this case was dismissed without prejudice and closed, a Motion to Reopen was denied and reopened following an appeal. When the Court denied WRS' Motion to Reopen, WRS filed its Complaint again at Case No. 03-1398. When this case at Case No. 00-2041 was reopened, the Court closed Case No. 03-1398 and consolidated Case No. 03-1398 with Case No. 00-2041. (03-1398 Doc. 38; 00-2041 Doc. 70).

The Pleadings

At Case No. 03-1398 Herklotz' pleadings were essentially the same as those filed at Case No. 00-2041. At Case No. 00-2041, Parkinson filed an Answer. (Doc. 12). At Case No. 00-2041 von Bernuth filed an Answer and Affirmative defenses. (Doc. 11). At Case No. 03-1398, on October 29, 2003, von Bernuth filed an Answer, Affirmative Defenses, and Counterclaim. (Doc. 6). On February 18, 2005, in conjunction with a Motion to Strike a Default, Gibson for Parkinson and Plaza filed an Answer, Affirmative Defenses, and Counterclaim, filed at Case No. 03-1398 in the same form as that filed by von Bernuth in 2003. (Doc. 30). WRS filed Reply to the Counterclaim on March 25, 2005 addressing the averments in von Bernuth's, Parkinson's, and Plaza's, Counterclaims filed by Gibson. (03-1398 Doc. 36). On May 25, 2001, Plaza filed an Answer and Counterclaim at Case No. 00-2041. (Doc. 23). On August 17, 2001, pursuant to an Order of July 31, 2001, WRS responded with an Answer to the Plaza Counterclaim. (Doc. 37).

Proceedings

Following the reopening of Case No. 00-2041, The Honorable William Standish resided over several status conferences and entered several Case Management Orders. However, in

February 2006, the case was reassigned to Judge Arthur Schwab. On February 15, 2006, Judge Schwab scheduled a status conference for March 9, 2006. Following the entry of the scheduling Order, Herklotz filed a Motion for Summary Judgment or Partial Summary Judgment on the WRS claim premised on his claim that his liability had been discharged by events that took place after he gave his guaranty and on the assertion that WRS' records were not sufficiently reliable to establish damages. (Doc.81).

On March 9, 2006, it is WRS' counsel's recollection that he apprised the Court that WRS did not intend to further pursue the claims that pertained to its security interests but intended only to pursue the claims seeking money judgments against Plaza and the guarantors. WRS recognizes that no entry appears in the docket concerning this statement. However, following the conference, the Court set times for each party to file Motions for Summary Judgment with respect to liability and suggested that the parties retain an accountant to address the reliability of the WRS records. Although John Gibson was present at the conference for Plaza, Parkinson, and von Bernuth, he stated that only von Bernuth was intending to defend. Accordingly, the Court set a time for WRS and von Bernuth to file their respective Motions for Summary Judgment. (Case Management Order of March 10, 2006) WRS moved for Summary Judgment as to von Bernuth and Herklotz (Doc. 88 and 91, respectively). WRS also moved for a default as to Plaza and Parkinson. (Doc. 85). WRS, Herklotz, and von Bernuth, by Gibson, stipulated to retain Schneider Downs to review the WRS records. (Doc. 86 and 87). When von Bernuth failed to file a Motion for Summary Judgment or pay for the accountant, WRS also moved for default as to von Bernuth. (Doc. 98).

Ultimately, WRS was granted Summary Judgment as to the Herklotz liability. (Doc. 104). Defaults were entered against Plaza, Parkinson, and von Berntuh, (Doc. 97 and 101, respectively). WRS and Herklotz then proceeded to have the accountants examine WRS' records. Following receipt of the report, Herklotz moved to transfer the case to California and WRS filed a Motion for Summary Judgment against Herklotz as to damages and for entry of Default Judgment as to Plaza, Parkinson, and von Bernuth. (Doc. 108, 113 and 118, respectively).

The Court granted WRS' Motion and entered Judgment in favor of WRS and against Herklotz in the sum of $2,584,749.03. (Doc.139). In a separate Order, the Court granted WRS' Motions for Entry of Default Judgments for WRS and against Plaza, von Bernuth, and Parkinson in the sum of $2,584,749.03.(Doc. 140). With regard to Herklotz' Motion to Transfer the case to California, the Court severed Herklotz' cross-claims against Plaza, von Bernuth, and Parkinson, and transferred those severed claims to California. (Order of February 27, 2007). At that point, the Court administratively closed the case on the premise that WRS' essential abandonment of all claims but those seeking money judgment, the Herklotz Judgment, the Default Judgments against Plaza, von Bernuth, and Parkinson, and the severance of the Herklotz' cross-claims concluded all matters as to all parties.

The District Court's Jurisdiction to Entertain and Decide von Bernuth's Rule 60(b) (6) Motion.

The traditional rule is that upon the filing of a Notice of Appeal the District Court looses jurisdiction over those aspects of the case that are involved in the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 103 S. Ct. 400, 74 L. Ed. 2d 225, 1982 U.S. LEXIS 166, 51 U.S.L.W. 3413, 35 Fed. R. Serv. 2d (Callaghan) 365 (1982). This is a judge made rule based upon prudential rather than statutory considerations. Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90(3d Cir. Pa. 1988). Thus, notwithstanding the appeal, the district court retains jurisdiction to issue Orders affecting the record on appeal.

Bensalem Township v. International Surplus Lines Ins. Co., 38 F.3d 1303 (3d Cir. Pa. 1994).

The jurisdiction retained, however, does not appear to extend to the ability to rule on a Motion filed under Rule 60(b). Rather, as the Tenth Circuit stated:

> The modern view is that a pending appeal does not preclude a district court from entertaining a Rule 60(B)(2) motion." 12 Moore's Federal Practice 3d, § 60.67[2][b], at 60-207. We have stated that although a district court may lack "jurisdiction to *grant* the Rule 60(b)(2) motion due to the appeal . . . the court was free to consider the motion." Aldrich Enter., Inc. v. United States, 938 F.2d 1134, 1143 (10th Cir. 1991).

This is consistent with the premise that filing the Rule 60(b) Motion does not destroy appellate jurisdiction that vests when the Notice of Appeal is filed. Stone v. INS, 514 U.S. 386, 115 S. Ct. 1537, 131 L. Ed. 2d 465 (1995). The proper procedure was described in Venen v. Sweet, 758 F.2d 117, 120 n.2 (3d Cir. 1985.),

> Most Courts of Appeals hold that while an appeal is pending, a district court, without permission of the appellate court, has the power both to entertain and to deny a Rule 60(b) Motion. If a district court is inclined to grant the motion or intends to grant the motion, those courts also hold, it should certify its inclination or its intention to the appellate court which can then entertain a motion to remand the case. Once remanded, the district court will have power to grant the motion, but not before.

See also: Dean v. Brandywine Studios, Inc., 2003 U.S. Dist. LEXIS 19873 (D. Del. Nov. 5, 2003).

In addition to certifying the intent to rule on the Rule 60(b) Motion, the District Court retains jurisdiction to enter Orders that aid in the appeal. This jurisdiction includes the ability to enter finality certification under F.R.C.P. 54(b) SafeT Care Mfg. v. Tele-Made, Inc., 497 F.3d 1262 (Fed. Cir. 2007). Where separate judgments have been entered against different defendants some of whom have appealed, the court may enter a certification of finality as to the appealing defendants, preserving or establishing appellate jurisdiction while proceeding on the claims of the non- appealing defendants. Hartwell v. Allied Chemical Corp., 457 F.2d 1335 (3d Cir. Pa.) see also Bendix Aviation Corp. v. Glass, 195 F.2d 267(3d Cir. Pa. 1952).

Finally, although the Default Judgment entered against von Bernuth did not expressly deal with the Counterclaims, those claims were concluded by the confirmation of the WRS Chapter 11 Plan on June 23, 2005. In re Ben Franklin Hotel Assocs., 186 F.3d 301, 1999 (3rd Cir. 1999).

In light of the above, WRS submits that the District Court may consider, but not decide, von Bernuth's Rule 60(b)(6) Motion. If the Court believes it should be granted, the Court should certify to the Circuit Court its intention. However, because the granting of the Motion may destroy the appellate jurisdiction and because the Judgment entered against Herklotz is based upon a separate guaranty document than that questioned von Bernuth, the Court should likewise enter an order, *nunc pro tunc*, certifying the Judgment against Herklotz as final and that there is no reason to delay its finality so that it will be treated as final pursuant to F.R.C.P. 54(b)

Furthermore, WRS submits that the Default Judgments entered against Plaza, Parkinson, and von Bernuth, were entered because of their failure to prosecute their cases. This included their failure to prosecute their respective Counterclaims. The Court understood that the entry of the Default Judgments would conclude the respective Defendant's cases and would result in the finality. WRS has moved for the Court to amend the Judgments entered against Parkinson and Plaza and, following consideration for his Rule 60(b) Motion, to amend the Orders entering Default Judgments to express that the Counterclaims were terminated by the entry of the discharge injunction arising from confirmation of the WRS Chapter 11 Plan so the Default Judgments not only concluded WRS' claim against the respective Defendants, but also to enter judgment for WRS on the respective Counterclaims since any liability thereon was discharged.

Von Bernuth's Motion Should be Denied

Defendant, von Bernuth, has moved the Court to vacate the Default Judgment against him with a Motion for Reconsideration and for relief under F.R.C.P. 60(b)(6). Rule 60(b) provides the District Court with the poser to "relieve a party of a final judgment on such terms as are just." Rule 60(b)(6),

> [G]rants federal courts broad authority to relieve a party from a final judgment "upon such terms as are just," provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5). The Rule does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d 855, 1988 U.S. LEXIS 2737, 56 U.S.L.W. 4637, 11 Fed. R. Serv. 3d (Callaghan) 433 (1988).

Timeliness

The party must make the Motions seeking the relief within a reasonable time which for matters described in Rule 60(b)(1)(2) and (3) cannot exceed one year. For Motions made under Rule 60(b)(6) to determine what constitutes a reasonable time requires the Court to "scrutinize the particular circumstances of the case and balance the interest in finality with the reasons for delay". PRC Harris, Inc. v. Boeing Co., 700 F.2d 894 (2d Cir. N.Y. 1983); Greenblatt v. Orenberg, 2007 U.S. Dist. LEXIS 21645 (D.N.J. Mar. 27, 2007); aff'd 102 Fed. Appx. 768, 2004 U.S. App. LEXIS 14804 (3d Cir. N.J. 2004); cert. denied, 543 U.S. 943, 125 S. Ct. 368, 160 L. Ed. 2d 255, 2004 U.S. LEXIS 6970, 73 U.S.L.W. 3246 (2004).

"[R}easonableness is a mutable cloud, which is always and never the same") (paraphrasing Emerson). Sierra Club v. Secretary of the Army, 820 F.2d 513, 517 (1st Cir. 1987). Under Rule 60(b)(6) it may be more or less than one year. Cotto v. United States, 993 F.2d 274 (1st Cir. P.R. 1993). Reasonableness depends not only on the lapse of time, but also the explanation justifying the delay. Harris v. Union Elec. Co., 846 F.2d 482 (8th Cir. Mo. 1988); Carmona v. United States, 2005 U.S. Dist. LEXIS 8625 (E.D. Pa. Apr. 7, 2005). If the moving party fails to offer an explanation for the lapse of time in moving for the Rule 60(b)(6) relief, the moving party cannot establish the crucial elements necessary to permit the Court to grant the relief. Federal Land Bank v. Cupples Bros., 889 F.2d 764, (8th Cir. Ark. 1989).

In the within case, the Affidavits submitted by von Bernuth and Gibson offer explanations for von Bernuth's failure to prosecute his defense and counterclaim prior to the entry of the default and Default Judgment. Neither Affidavit, nor von Bernuth's Motion, offer any explanation for the lapse of time from May 21, 2007, the date that von Bernuth claims to have first learned of the Default Judgment, and October 16, 2007, the date that von Bernuth filed his motion. Having alleged that he immediately retained counsel upon learning of the Default Judgment, von Bernuth waited over five months to move for relief Because of this unexplained lapse of time, von Bernuth cannot be considered to have moved "within a reasonable time" as required as a prerequisite to the Court considering his Motion, especially in light of the amount of the judgment and the alleged "exceptional circumstances" that led to the default. For this reason alone, his Motion should be denied.

Lack of a Meritorious Defense

The Third Circuit requires that the District Court weigh three factors when considering whether to vacate a default judgment:

> (1) whether the defendant has demonstrated that vacating the default judgment will not visit prejudice on the plaintiff;
>
> (2) whether the defendant has established a meritorious defense; and
>
> (3) whether the defendant has demonstrated that the default was not the result of his culpable conduct.

Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 175 Fed. Appx. 519, 522 (3d Cir. 2006); See also Harad v. Aetna Cas. & Sur. Co., 839 F.2d 979, 982 (3d Cir. 1988). To establish a meritorious defense, von Bernuth must do more than merely facially assert a defense. Harad v. Aetna Cas. & Sur. Co, supra. "The threshold question is whether von Berntuh has established a meritorious defense. This is the critical issue because without a meritorious defense von Bernuth could not win at trial", paraphrasing, United States v. $55,518.05 in U.S. Currency, 728 F.2d 192 (3d Cir. Pa. 1984). A meritorious defense is shown when "allegations of defendant's answer, if established on trial, would constitute a complete defense to the action." Tozer v. Charles A. Krause Milling Co., 189 F.2d 242, 244 (3d Cir. 1951).

Here, von Bernuth has alleged that he has a meritorious defense, but has not alleged in his motion the nature of those defenses. To the extent that the defenses are those raised in his Answer and Affirmative Defenses, WRS has addressed the lack of merit in its Motion for Summary Judgment, Concise Statement of Facts in Support of the Motion, and its Brief, (Doc. 88, 89, and 90), which WRS incorporates herein by reference as if fully set forth at length.

To the extent that von Bernuth relies upon the Parkinson Affidavit to set forth facts that support a meritorious defense, WRS submits that Parkinson's statements are inaccurate and not of sufficient probative value to establish that a defense exists to the WRS claim against von Bernuth. WRS has filed a Response to the Affidavit, with documentary evidence consisting mostly of Parkinson's own Memoranda the contents of which contradicts much of what Parkinson asserts in his Affidavit.

Parkinson in his affidavit essentially asserts that the WRS records do not accurately reflect the amount owed by Plaza and, consequently, von Bernuth. As evidence of this, he asserts that WRS maintained two lock box accounts under the services agreement. The first at National Bank of Canada and the second or "new " account at Mellon Financial Services in Los Angeles. As shown in WRS' Response to Parkinson's Affidavit, there was only one lock box account opened under the Services Agreement. WRS initiated the process with the National Bank of Canada in November 1998 shortly after the execution of the Services Agreement. Plaza by Parkinson did authorize the delivery of the document to National Bank of Canada until March of 1999. The lock box was assigned and was maintained by NBOC at Mellon Financial in Los Angeles. The lock box records attached to WRS' Response to the Parkinson Affidavit identify the lock box by number 22011 and show both the NBOC and Mellon Financial name. WRS obtained and delivered to Schneider Downs NBOC's records of this lock box, which were reviewed and correlated to the WRS records by Schneider Downs when establishing the amount of the debt as of December 31, 2000. (Doc. 116 Attachment #1)

After the lock box was opened, Parkinson did not notify his customers to direct payments to the lock box until June 24, 1999. The boldfaced print on the bottom of Parkinson's Exhibit "E" states,

A MAILING TO THE CHIEF FINANCIAL OFFICERS OF ALL PLAZA'SCURRENT CUSTOMERS DETAILING THIS INFORMATION AND AN OVERALL UPDATE ON PLAZA'S NEW FINANCING WILLGO OUT SPEPARATELY ON JUNE 24, 1999 FROM ERIC PARKINSON.

The email that suggests that payments were made to Plaza for which Plaza did not receive credit does not suggest that payments were sent to WRS or the lock box only that payment was made on a Plaza invoice. As shown in WRS' Response to the Parkinson Affidavit, Plaza received, endorsed, and deposited accounts receivable checks into its own account as late as October 1999. Thus, the fact that a creditor paid a Plaza receivable does not establish a defense to von Bernuth's liability.

Parkinson also claims that WRS' debt should not have increased, except by interest following the execution of the Services Agreement and that WRS breached by failing to collect the receivables. In fact, WRS records demonstrated that some receivables were collected and funds distributed to Plaza under the Services Agreement. The problem encountered by WRS in collecting the receivables and described by Jack Napor was also experienced by Plaza. Plaza invoiced its customers for the gross sales price of the cassettes ordered. However, Plaza sold these cassettes subject to a right to return for credit against those gross invoices. The returns were sent by Plaza customers to Plaza in Arkansas not to WRS. Plaza could not accurately track the credits to which their customers were entitled. As a result, what appeared as valid accounts receivables were gross amounts subject to credits.

Furthermore, Plaza continued to order new product from WRS throughout 1999 as evidenced by the documents attached to WRS' Response to the Parkinson Affidavit.

Contrary to his assertions about lockbox collections, Parkinson was aware of the collections and directed WRS to retain Plaza's share of certain collection in early 2000. See documents attached to WRS' Response to Plaza. Although Parkinson's Affidavit suggests that two employees "took over" Plaza, in fact, the two employees were attempting to reconcile the Plaza records as contemplated in the Services Agreement and as stated by Parkinson's own words. Furthermore, there was never a foreclosure of the WRS interests in Plaza as Parkinson's Affidavit suggests. In fact, he was discussing the possibility of such an action in his "workout plan dated April 20, 2000". Furthermore, Parkinson claims WRS failed to enforce its security interest in the Plaza inventory of videocassettes. First, Parkinson in his April 20, 2000 work out plan clearly acknowledges that WRS cannot exploit the inventory without infringing on the copyrights of the rights holders. WRS' Complaint in the within action sought a judicial foreclosure of that interest, but abandoned it following the reopening of the case. Enforcement of the WRS security interests in inventory of videocassettes without infringing the rights holders copyrights was acknowledged by Parkinson as an impediment to liquidating the inventory. Furthermore counsel for Herklotz as "rights holder" of Giant of Thunder Mountain" notified WRS to refrain for selling inventory of those videocassettes. (WRS' Response to Parkinson Affidavit.) Thus, exploitation of the inventory was not a means by which the Plaza debt could be reduced.

Finally, contrary to his current assertion, Parkinson throughout his correspondence with WRS acknowledged that Plaza owed a significant amount of money to WRS and engaged in efforts to pay that debt. On behalf of Plaza, he continued to order product from WRS. His contradictory statements in his Affidavit are insufficient to show that von Bernuth has any meritorious defense to WRS claim and WRS' Motion for Summary Judgment likewise demonstrates that von Bernuth's alleged defenses were not meritorious. Therefore, von Bernuth cannot satisfy this prerequisite to his requested relief.

The Counterclaims

As pointed out in the discussion of the process of this case, Plaza, Parkinson, and von Bernuth, filed Counterclaims against WRS during this. However, once WRS commenced its Chapter 11 bankruptcy proceeding, neither Plaza, Parkinson, nor von Bernuth, moved the Bankruptcy Court for relief from the automatic stay to permit them to pursue those claims in the District Court. Furthermore, WRS confirmed a reorganization plan on June 23, 2005. Section 1141(d)(1)(A) of the Bankruptcy Code states: "Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan . . . discharges the debtor from any debt that arose before the date of such confirmation . . . ." 11 U.S.C. § 1141(d)(1)(A). Section 524(a)(2) of the Bankruptcy Code further implements the statutory discharge and finality provided by § 1141. It provides that the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). In re Ben Franklin Hotel Assocs., supra. Accordingly, although the district court did not expressly dismiss the counterclaims, WRS has no liability to any of the Defendants on the Counterclaims and Defendants can no longer prosecute those Counterclaims against WRS even as a set off. Thus, those claims cannot be a meritorious defense to WRS' claims on which the Judgment is based.

Exceptional Circumstances

WRS recognizes that Rule 60(b)(6) enables a Court to relieve a party of a judgment upon the showing of exceptional circumstances which in the context of counsel's inaction requires the exercise of diligence by the client. Boughner v. Secretary of Health, Education & Welfare, 572 F.2d 976, 1978 U.S. App. LEXIS 12257, 25 Fed. R. Serv. 2d (Callaghan) 249 (3d Cir. Pa. 1978). Although the Gibson Affidavit is replete with confessions about lack of diligence, the one fact that is out of place is the fact that von Bernuth faithfully paid his bill. Assuming that this was true and that Gibson's inaction was not induced by von Bernuth's failure to timely pay Gibson, Gibson's invoices would constitute communication to von Bernuth about the litigation and presumably a disclosure of the activity or inactivity. Gibson did not provide these invoices as part of his Affidavit. Thus, WRS submits that although Gibson has shown that he failed to act, von Bernuth has not demonstrated that he acted with the diligence required of him especially in light of his acquiescence to Gibson's lack of communication.

Furthermore, notwithstanding the exceptional circumstances that explain why a default was entered, as shown above, von Bernuth made no effort to explain the delay in moving for the requested relief and failed, as set forth above, to establish a meritorious defense. In addition, von Bernuth made no effort to show why WRS would not be prejudiced by the vacating of the Default Judgment. Accordingly, WRS submits that he has failed to demonstrate the prerequisites to invoking the Court's discretion to vacate the default judgment.

Conclusion

For the reasons set forth herein, WRS respectfully submits that the Court should not grant the Motion of Charles von Bernuth to vacate the Default Judgment and respectfully requests that the Court deny the Motion.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly_____

Thomas E. Reilly, Esquire
Pa. I.D. No. 25832
2025 Greentree Road
Pittsburgh, PA 15220
(412) 341-1600

CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Brief in Opposition to Motion for Reconsideration or for Relief from Judgment was delivered via first-class mail, postage pre-paid on the 2nd day of November, 2007, to the following:

James R. Walker, Esquire
Manion McDonough & Lucas, P.C.
600 Grant Street, Suite 1414
Pittsburgh, PA 15219

John W. Gibson, Esquire
Greenfield Court
1035 Fifth Avenue
Pittsburgh, PA 15219

John P. Sieminski, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

THOMAS E. REILLY, P.C.

BY: _____/s/ Thomas E. Reilly____
Thomas E. Reilly, Esquire